



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/875,521	06/06/2001	James W. O'Toole JR.	CIS00-3139	6938

47654 7590 04/26/2007  
DAVID E. HUANG, ESQ.  
BAINWOOD HUANG & ASSOCIATES LLC  
2 CONNECTOR ROAD  
SUITE 2A  
WESTBOROUGH, MA 01581

EXAMINER

TANG, KENNETH

ART UNIT PAPER NUMBER

2195

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/26/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

09/875,521

Applicant(s)

O'TOOLE, JAMES W.

Examiner

Kenneth Tang

Art Unit

2195

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 01 January 1932.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 7-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 13-30, and 33 is/are rejected.
- 7) ☒ Claim(s) 31 and 32 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. This action is in response to the Amendment/RCE filed on 9/22/05. Applicant's arguments have been fully considered but are not found to be persuasive.
2. In response to the Restriction requirement, Applicant has elected group I (Claims 1-6 and 13-33). Claims 7-12 have been withdrawn from consideration and Applicant is required to cancel these claims.
3. Claims 1-33 are presented for examination.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claims 1-6, 13-16, 19, 21-24, 27, and 29-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Ogasawara et al. (hereinafter Ogasawara) (US 6,070,052).**

5. As to claim 1, Ogasawara teaches a method in a data communications device for directing a request to process data (network communication system) (*col. 1, lines 10-13*), comprising the steps of:

receiving the request from a client (*col. 3, lines 14-17*);

generating an estimated response usage for each resource of a plurality of resources that reflects a potential usage if responding to the request, said estimated response usage including a

Art Unit: 2195

cost estimate for processing the request, the cost estimate being based on a resource usage amount relating to the client (expected utility function, utility function, future utility function) (*col. 2, lines 12-58*);

selecting a resource from said plurality of resources to process the request based on said estimated response usage (*col. 2, lines 19-36*); and

forwarding the data to the one of the plurality of resources selected in the step of selecting (*col. 2, lines 59-67*).

6. As to claim 2, Ogasawara teaches wherein the step of selecting the one of the plurality of resources comprises:

generating an estimated available usage for each resource based on the request and usage information received from a usage meter for each resource (expected utility function, utility function, future utility function) (*col. 2, lines 12-58*); and

selecting the resources based on a highest estimated available usage for each resource (*col. 2, lines 19-36*).

7. As to claim 3, it is rejected for the same reasons as stated in the rejection of claim 1. In addition, Ogasawara teaches a memory that stores a cost modeler and it is inherent that there is a program/application to implement this within the data communications system; an interconnection mechanism (*col. 5, lines 25-40*); and it is inherent that there is a processor (that performs the utility function calculations) coupled to the memory by the interconnection

Art Unit: 2195

mechanism, wherein the processor operates in accordance with instructions of the cost modeler application stored in the memory to direct the request.

8. As to claim 4, it is rejected for the same reasons as stated in the rejection of claim 2.
9. As to claim 5, it is rejected for the same reasons as stated in the rejection of claim 1.
10. As to claim 6, it is rejected for the same reasons as stated in the rejection of claim 1.
11. As to claim 13, it is rejected for the same reasons as stated in the rejection of claim 1.
12. As to claim 14, Ogasawara teaches receiving usage information from a usage meter for each resource that measures the amount of usage of each resource over time; generating an estimated base usage of each resource based on the usage information; and generating a peak usage metric (maximum expected utility) for each resource that represents a measurement of the highest level of usage attained for each resource over a current billing period based on the usage information (*col. 2, lines 19-58*).
13. As to claim 15, Ogasawara teaches wherein the step of generating the economic metric comprises the steps of generating an estimated request usage for each resource that reflects an estimate of the projected usage of each resource over a current time based on the request for

Art Unit: 2195

data; and generating an estimated available usage for each resource based on the usage metric for each resource and the estimated request usage for each resource (*col. 2, lines 19-58*).

14. As to claim 16, it is rejected for the same reasons as stated in the rejection of claim 2. In addition, Ogasawara teaches generating a peak usage metric (maximum expected utility) for each resource that represents a measurement of the highest level of usage attained for each resource over a current billing period based on the usage information (*col. 2, lines 19-58*).

15. As to claim 19, Ogasawara teaches wherein the step of generating the economic metric comprises generating the economic metric based on a category that indicates an estimated request usage for each resource (*col. 2, lines 19-58*).

16. As to claim 21, it is rejected for the same reasons as stated in the rejection of claim 3.

17. As to claims 22-24, it is rejected for the same reasons as stated in the rejection of claims 14-16.

18. As to claim 27, it is rejected for the same reasons as stated in the rejection of claim 19.

19. As to claim 29, it is rejected for the same reasons as stated in the rejection of claim 13.

20. As to claim 30, it is rejected for the same reasons as stated in the rejection of claim 13.

**21. Claims 17-18, 20, 25-26, 28 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ogasawara et al. (hereinafter Ogasawara) (US 6,070,052).**

22. As to claim 17, it is rejected for similar reasons as the rejection of claim 1. In addition, it is inherent that responding to a request will increase the cost of a resource. However, Ogasawara fails to explicitly teach comparing and selecting the resource with the lower cost increment.

"Official Notice" is taken that both the concept and advantages of providing that comparing and selecting the resource with the lower cost increment is well known and expected in the art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include comparing and selecting the resource with the lower cost increment to the existing system of Ogasawara because it would reduce costs, which would therefore, maximize the utilization function of Ogasawara.

23. As to claim 18, Ogasawara teaches wherein the step of generating the economic metric comprises generating a bandwidth metric that represents the bandwidth requirements for each resource (*col. 2, lines 12-18*). Ogasawara fails to explicitly teach that the network address of the client is provided because it would have been obvious to one of ordinary skill in the art at the time the invention was made that a network address of the client is provided because without it, data could not be transferred through the network.

Art Unit: 2195

24. As to claim 20, it is rejected for the same reasons as stated in the rejection of claim 17.

25. As to claims 25-26, they are rejected for the same reasons as stated in the rejection of claims 17-18.

26. As to claim 28, it is rejected for the same reasons as stated in the rejection of claim 20.

27. As to claim 33, it is rejected for the same reasons as stated in the rejection of claim 17.

***Allowable Subject Matter***

28. Claims 31-32 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

29. During patent examination, the pending claims must be "given their broadest reasonable interpretation consistent with the specification." *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once



Art Unit: 2195

issued, will be interpreted more broadly than is justified. *In re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969).

30. *Applicant's only argument is that the newly amended limitation where "the cost estimate being based on a resource usage amount relating to the client" is not taught in the reference of Ogasawara.*

Applicant merely states that it is not taught in Ogasawara but does not provide any support for this argument. Ogasawara teaches the cost estimate as being the "expected utility E" which is based on the expected resource/client usage that makes the request or call (*col. 2, lines 12-58*). Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth Tang whose telephone number is (571) 272-3772. The examiner can normally be reached on 8:30AM - 6:00PM, Every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on (571) 272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2195

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Kt  
10/15/06

  
**MENG-AL T. AN**  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100